IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1501 OF 2005

Kamlakar Kashinath Gaikwad ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr.Rahul S. Thakur, for the Applicant.

Ms.P.H. Kantharia, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

10th March 2005

P.C.:

. Heard Counsel for the parties. It is not in dispute that the Applicant is proceeded against for offences under sections 8C and 20 of the N.D.P.S.Act for carrying 5 Kgs. ganja in a plastic carry bag.

. Accepting the prosecution case as it is, it is obvious that contraband item found in

possession of the Applicant is below commercial quantity being only 5 Kgs. of ganja, whereas to make it commercial quantity, it ought to have been at least 20 Kgs. of ganja. If it is so, the rigours of section 37 will have no application in the fact situation of the present case, for the simple reason that neither the Applicant is charged for offence under section 19, 24 or 27A nor is found in possession of commercial quantity of ganja.

. In other words, the Applicant's bail application will have to be considered on its own merits in accordance with law applying the parameters for bail under ordinary law and not with reference to rigours of section 37 of the Act. The Court below has not considered those aspects at all.

. Accordingly, without going into the other contentious issues raised in this application, the Applicant is granted liberty to apply for bail afresh before the lower Court which will be considered in the light of observations made in this order. If such regular bail application is

filed by the Applicant, the same will be disposed of as expeditiously as possible and not later than four weeks from the date of presentation.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)